

OFFICIAL GAZETTE



GOVERNMENT OF GOA

NOTE: There is one Extraordinary issue to the Official Gazette Series II, No. 27 dated 3-10-98 namely Extraordinary dated 3-10-98 from pages 377 to 378 regarding Order from Department of Home (General Division).

GOVERNMENT OF GOA Department of Irrigation

Order

No. 3/25-15/90-IRRG/641

Read: 1) Govt. Order No. 3/25-4/87-IRRG. I, II, III & IV dated 5-8-1991.
 2) Govt. Order No. 3/25-4/87-IRRG (Part file) dated 19-10-1992.
 3) Govt. Order No. 3/25-15/90-IRRG/252 dated 16-6-1998.

Government is pleased to extend the ad hoc promotions of the following Assistant Engineers/Asstt. Surveyor of Works (Civil/Mech.) in Irrigation Department ordered vide Government orders referred to above, for a further period of four months beyond 31-7-1998 i.e. upto 30-11-1998 on the same terms and conditions as stipulated in the aforesaid orders.

1. Shri Sambhaji Rane	}	Mechanical
2. Shri Govind Hegde.		
3. Shri Mahesh Bhangui.		
4. Shri Shrikant D. Patil.		
5. Shri S. H. Nagarajaiah.		
6. Shri P. B. Akki.		
7. Shri Basavraj V. Pujari.		
8. Shri Ashok Kamatar.		
9. Shri Pramod Badami.		
10. Shri Vijaukumar S. Honawad.		
11. Shri R. B. Ghanti.		
12. Shri Maladkar G. V.		
13. Shri Sasikumar T. K.		
14. Shri T. K. Divakaran Pillai.		
15. Shri A. T. Durganwar.		
16. Shri S. S. Kulkarni.		
17. Shri Vishnu R. Konkankar.		
18. Shri V. P. Mohanan.		
19. Shri B. Kalachari.		
20. Shri D. Prakash.		
21. Shri B. B. Budyal.		
22. Shri N. D. Gopalkrishna.		
23. Shri S. P. K. Sabhapati.		
24. Shri G. N. Ravindran.		
25. Shri H. P. Dhame.		
26. Shri Augustin Thomas.		
27. Shri M. D. Shanbhag.		

28. Shri V. K. Thankappan.
29. Shri K. A. Sadanandan.
30. Shri M. S. Sharma.
31. Shri Shreedharan K. Vallapil.
32. Shri M. M. Anthony.
33. Shri P. N. Mukundan.
34. Shri V. D. Joseph.
35. Shri M. K. Jayarajan.
36. Shri Satish A. Kamat.
37. Shri T. A. Mohammad.
38. Shri V. P. Kuriakose.
39. Shri Satish L. S. Kudchadkar.
40. Shri B. A. Dessai.
41. Shri T. A. Atchutan.
42. Shri K. Venugopalan.
43. Shri Monian K. P.
44. Shri M. I. Narayanan.
45. Shri M. S. Gokak.
46. Shri S. D. Kalgutkar.
47. Shri C. Shreedharan.
48. Shri Ashok G. Nooli.
49. Shri Mohan A. Kamble.

This issues with the approval of Goa Public Service Commission, conveyed under their letter No. COM/II/11/27/(1)/92 dated 1-9-1998.

By order and in the name of the Governor of Goa.

S. M. Nadkarni, Ex-Officio Additional Secretary.

Panaji, 21st September, 1998.

Order

No. 3/25-20/85/IRRG/642

Government is pleased to transfer in public interest and with immediate effect, the below mentioned Executive Engineers/Surveyor of Works in the Irrigation Department against the places indicated against each of them.

Sr. No.	Name of the Officer and Designation	Present place of posting	New place of posting
1	2	3	4
1.	Shri V. M. Golasangui, Executive Engineer	Works Div. VII, T. I. P., Colvale.	Works Div. I, I. D., Panaji.
2.	Shri M. K. Pant, Executive Engineer	Works Div. XV, Bicholim.	Works Div. VII, T.I.P. Colvale.
3.	Shri A. A. Kulkarni, Surveyor of Works	Surveyor of Works, Circle I, Panaji.	Works Div. XV, I.D., Bicholim.

1	2	3	4
4. Shri R. R. Sohani, Surveyor of Works	Surveyor of Works; C.P.O., Panaji.	Surveyor of Works, Circle I, Panaji.	
5. Shri V. O. Madhava- nunni, Surveyor of Works.	Surveyor of Works, Circle II, Colvale.	Surveyor of Works, C.P.O., Panaji alongwith additional charge of Engineering Officer who is on leave.	

Shri S. Sekar, Executive Engineer, Works Div. VI, I.D., Colvale, shall hold the additional charge of Surveyor of Works, Circle II, Colvale until further order.

By order and in the name of the Governor of Goa.

S. M. Nadkarni, Chief Engineer & Ex-Officio Addl. Secretary (Irrg.).

Panaji, 21st September, 1998.

Order

No. 3/25-5/87-IRRG/690

On the recommendation of the Goa Public Service Commission as conveyed vide letter No. COM/II/11/27(1)/90 dated 9-7-1998, Govt. is pleased to order the promotion of Shri P. J. Bhole, Executive Engineer of the Irrigation Department, Govt. of Goa, to the post of Superintending Engineer in Irrigation Department on regular basis in the pay scale of Rs. 12000-375-16500 with immediate effect and posted in Circle II, Irrigation Department, Colvale, against the existing vacancy.

This promotion shall be subject to the results of Writ Petitions No. 116/98, 306/98 and 311/98 as per the orders of the Hon'ble High Court of Judicature Mumbai at Panaji dated 15-7-1998 and 10-8-1998.

By order and in the name of the Governor of Goa.

S. M. Nadkarni, Chief Engineer & Ex-Officio Additional Secretary.

Panaji, 28th September, 1998.

Notification

No. 21-1/CE-IRRG-EO-98/349

In exercise of the powers conferred by Sub-Section (1) of section 25 of the Goa, Daman and Diu Irrigation Act, 1973 (Act 18 of 1973), the Government of Goa hereby declares that it is satisfied that for the better cultivation of the lands and for the due preservation of the water resources of Left Bank Main Canal and the Right Bank Main Canal and Lift Irrigation Schemes of the Anjunem Irrigation Project, Kerim, Satari, Goa, it is expedient and desirable in the public interest to regulate that the paddy crop should be grown in any area/land coming under the command Area of Left and Right Bank Main Canal and the Lift Irrigation Schemes of the Anjunem

Irrigation Project, Keri, Satari-Goa, and the sowing thereof should invariably start by the middle of November, or earlier.

By order and in the name of the Governor of Goa.

S. M. Nadkarni, Chief Engineer & Ex-Officio Additional Secretary (Irrigation).

Panaji, 1st September, 1998.

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Department of Labour

Order

No. IRM/CON/VSC/(15)/98/9776

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Pereira Agencies Pvt. Limited, Vasco-da-Gama, Goa, and their workman Miss Leonor Gurgao, in respect of the matter specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the 'said Act'), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under section 7-A of the said Act.

SCHEDULE

"(1) Whether the action of the management of M/s. Pereira Agencies Pvt. Ltd., Vasco-da-Gama, Goa, in terminating the services of Miss Leonor Gurgao, with effect from 18-11-1996, is legal and justified?

(2) If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 15th July, 1998.

Order

No. IRM/CON/PONDA/(132)/97/9772

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Advait Electricals Engineers and Contractors, Ponda-Goa, and their workman Shri Kalidas Y. Naik, Electrician, represented by Gomantak Mazdoor Sangh, in respect of the matter specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the 'said Act'), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa, at Panaji-Goa, constituted under section 7-A of the said Act.

SCHEDULE

"(1) Whether the action of the management of M/s. Advait Electricals, Engineers and Contractor, Ponda-Goa, in terminating the services of the workman, Shri Kalidas Y. Naik, Electrician, with effect from 15-2-1997, is legal and justified?

(2) If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 15th July, 1998.

Order

No. IRM/CON/VSC/(14)/98/9773

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Varsha Printing Press, Vasco-da-Gama, Goa, and their workman Kum. Pratima Bhagat, Vasco, in respect of the matter specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the 'said Act'), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under section 7-A of the said Act.

SCHEDULE

"(1) Whether the action of the management of M/s. Varsha Printing Press, near the M.P.T. Hospital, Bainha, Vasco-da-Gama, Goa, in terminating the services of Miss Pratima Bhagat, with effect from 14-2-1997, is legal and justified?

(2) If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 16th July, 1998.

Order

No. IRM/CON/P/(157)/98/9774

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. MRF Limited, Usgao, Ponda-Goa, and their workman Shri Purushottam

Desai, represented by the Goa MRF Employees' Union, in respect of the matter specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the 'said Act'), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa, at Panaji-Goa, constituted under section 7-A of the said Act.

SCHEDULE

"(1) Whether the action of the management of M/s. MRF Ltd., Usgao, Ponda Goa, in terminating the services of Shri Purushottam Desai, with effect from 14-4-1997, is legal and justified?

(2) If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 16th July, 1998.

Order

No. IRM/CON/SG/(17)/98/9775

Whereas the Government of Goa is of the opinion that an industrial dispute between the Employer Shri Ashfag A. K., Contractor, and Shri Balu Pandit, represented by the Goa Engineering Workers' Union, in respect of the matter specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the 'said Act'), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa, at Panaji-Goa, constituted under section 7-A of the said Act.

SCHEDULE

"(1) Whether the demand of Goa Engineering Workers' Union, for payment of full wages to Shri Balu Pandit by the employer Shri Ashfag A. K., Contractor, for the period from 15-9-97 to 28-2-98, is legal and justified?

(2) If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 16th July, 1998.

Order

No. IRM/CON/SG/(2)/98/9777

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Kenson Engineers and its workman Shri Raghuvir Pagi, in respect of the matter specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the 'said Act'), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under section 7-A of the said Act.

SCHEDULE

"(1) Whether the action of the management of M/s. Kenson Engineers in terminating the services of Shri Raghuvir V. Pagi, Fitter, with effect from 6-10-97, is legal and justified?

(2) If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 16th July, 1998.

Order

No. IRM/CON/SG/(56)/97/9784

Whereas the Government of Goa is of the opinion that an industrial dispute exists between M/s. Zuari Agro Chemicals Employees Co-operative Society Limited, Zuarinagar, and the workmen represented by Goa Trade and Commercial Workers' Union, in respect of the matter specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the 'said Act'), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under section 7-A of the said Act.

SCHEDULE

"(1) Whether the demands raised by the Goa Trade and Commercial Workers Union vide the letter No. Lt/Charter/ZAC Employees Co-operative Society/02/89 dated 1-4-89, before the management of M/s. Zuari Agro Chemicals Employees Co-operative Society Ltd., Zuarinagar, are justified?

(2) If not, to what relief the workmen are entitled?"

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 17th July, 1998.

Order

No. 28/57/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 23rd June, 1995.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/55/90

Workmen Rep. by Goa Trade &
Commercial Workers Union,
Panaji - Goa.

— Workman/Party I

V/s

M/s Deep Plast,
Tivim Industrial Estate,
Karawada, Bardez-Goa.

— Employer/Party II

Workman-Party I represented by Adv. Raju Mangeshkar.
Employer-Party II represented by Adv. P. J. Karkera.

Panaji, Dated: 29-5-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Sec. (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 13th Nov., 1990 bearing No. 28/57/90-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Deep Plast, Tivim Industrial Estate, Karawada, Bardez-Goa, in terminating the services of their eight workmen namely Miss Meena Chodankar, Miss Geeta Mayekar, Miss Rashika Kubal, Miss Kusum Vaigankar, Miss Lalitha Salgaonkar, Miss Kanti Amonkar, Miss Angali Shirodkar and Shri Chandrakant Kumbhar with effect from 23-3-1990, is legal and justified?"

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/55/90 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (For short, 'Workmen') were represented by Adv. R. Mangeshkar and the Party II (For short, 'Employer') was represented by Adv. P. J. Karkera. The workman filed their statement of claim which is at Exb. 7. The facts of the case in brief as pleaded by the workman in their statement of claim are that the employer is engaged in the business of manufacturing polypropylene, polythene bags, rolls with rotogravure, printing, plastic bags and also undertakes printing jobs and has its factory situated at D/2/45, Tivim Industrial Estate, Karawada, Bardez-Goa. The employer used to supply its product to various parties in and outside Goa, a few amongst them

being the reputed establishments like M/s Shetye Tyres, Zantye Cashew factories etc. That the employer started its production somewhere in the year 1980 and had on its rolls eight workmen named in the reference. That in the first week of March, 1990 the workmen held a meeting between themselves in order to unionise themselves and to decide whether to become the members of Goa Trade & Commercial Workers Union. That on learning about the same, the employer thought it fit to victimise the workman by informing them that he would close down the establishment in case the workers formed into an union and became the members of Goa Trade & Commercial Workers Union. That thereafter the employer refused employment to the workmen on 23rd March, 1990 and informed them that the employer had closed its establishment w.e.f. 23-3-90 as there was no raw material. That the wages of the workmen for the month of March, 1990 though was promised to be paid on 30-3-90 was infact paid on 30th April, 1990. That though the workmen had put in hard and dedicated service the employer did not give to them any benefits like ESI, over time, provident fund, bonus, etc. That since the employer refused employment the workmen raised industrial dispute before the Asst. Labour Commissioner, at Mapusa, Goa, but the employer did not take part in the conciliation proceedings. The contention of the workman is that the reasons given by the employer for closing down its establishment is incorrect and made with a malafide intention in order to victimise the workmen. The workmen further contended that under the garb of closure the employer had started its operation elsewhere. The contention of the workmen is that the action of the employer in terminating the services of the 8 workmen named in the reference is illegal and unjustified. The workmen have therefore claimed reinstatement with full back wages.

3. The employer filed written statement which is at Exb. 9. The employer denied that the production was started somewhere in the year 1980 and stated that it was started in the year 1985. The employer denied that the establishment was closed to victimise the workmen. The employer stated that the establishment was locked and taken over by the authorities of Maharashtra State Financial Corporation (For short, 'MSFC') on 26-3-90 and on account of that, the workmen could not report for work. The employer denied that there was any refusal of employment to the workmen on his part. The employer further contended that all the legal dues of the workmen including the wages for the month of March, 1990 were paid. The employer also contended that workman Miss Kusum Vaigankar and Miss Kanti Amonkar were working with the employer since January, 1986 and the remaining workmen were working since January, 1988. The employer denied that the operation of manufacturing was started elsewhere as contended by the workmen and stated that workmen were not entitled to any relief as claimed by them. Thereafter the workmen filed rejoinder which is at Exb. 10. The workman submitted that they were entitled to legal dues upon closure of the establishment and they have the first lien on the said legal dues. The workman denied that the employer had paid their legal dues and stated that what was paid by the employer was only the wages upto March, 1990. The workmen maintained that the employer had started the operation of manufacturing elsewhere. The employer then filed further rejoinder which is at Exb. 11 and produced the copy of the Panchanama dated 26-3-90 in support of its contention that the MSFC had taken over the possession of the establishment including the plant and machinery. The employer stated that after taking over the possession of plant and machinery the MSFC locked the factory and the plant and machinery continues to be in possession of MSFC. From the pleadings of the parties, following issues were framed at Exb. 12.

1. Does Party No. I workmen proves that the order of termination of their services is not legal and justified?
2. Does Party II proves that the factory was closed or locked out and taken over by Maharashtra State Corporation?

3. Whether the Party I proves that their tenure of service started from the year 1980?
4. Whether Party II proves that the workmen No. 4 and 6 were working since January, 1986 and other workmen were working since January, 1988?
5. Whether Party No. I is entitled to any relief?
6. What award or order?

4. My findings on the above issues are as under:

1. In the negative.
2. In the affirmative.
3. In the negative.
4. As per para 6 below.
5. As per para 7 below.
6. As per order below

REASONS

Issue Nos. 1 & 2: Since both these issues are interlinked they are taken up together. There is no dispute that the services of the workmen have been terminated. The question is whether the termination of the services is illegal and unjustified as contended by the workman. The contention of the workman is that the employer terminated their services under the garb of closure because the workmen wanted to unionise themselves and become the members of Goa Trade & Commercial Workers Union. The workman have also contended that after the closing down of the establishment, the employer started its operation elsewhere, thereby denying employment to the workmen. However, no evidence at all has been produced by the workmen to substantiate its above contention. On the contrary, the case of the employer is that its establishment had to be closed down and it could not continue with its business because MSFC put lock to its shed wherein the business of manufacturing was being carried out and that MSFC also took over the plant and machinery. In support of its above contention the employer has produced the copy of the panchanama dated 26-3-90 Exb. 22. In the panchanama it is clearly mentioned that the MSFC has taken possession of the plant and machinery of the employer existing in the shed bearing number D/2/45 at Tivim Industrial Estate, Karaswada, Mapusa, Bardez-Goa, wherein the employer was carrying on its business of manufacturing polythene and plastic bags besides undertaking the work of printing. It is also mentioned in the Panchanama Exb. 22 that after taking the possession of the factory premises the same has been properly locked and sealed. This panchanama has been produced by the employer through its witness Shri Deepak K. Kakaya and the workmen have not disputed this panchanama nor they have disputed that the factory premises as well as the plant and machinery have been taken over by MSFC on 26-3-90. Infact, the workman Shri Chandrakanat Tukaram Kumbhar in his cross examination has admitted that the factory of the employer is closed and the same is locked by MSFC. Since it is the case of the workman that after the closing of the factory/establishment, the employer started operations elsewhere, the burden was on the workman to prove the same. However, the workman have not led any evidence to that effect and thus they have failed to discharge this burden cast on them. Thus, from the admissions made by the workman and the evidence produced by the employer, it is an established fact that the business of the employer was closed down due to the taking over of the possession of the plant and machinery by the MSFC and also on account of locking

of the factory premises of MSFC. The workmen have contended that the employer refused employment to them on 23-3-90 which fact is denied by the employer. The contention of the employer is that the workmen could not report for work from 26-3-90 on account of the taking over of the plant and machinery by MSFC which has resulted in closing of the business of the employer. The workmen have not led any evidence to support their contention that the employment was refused to them on 23-3-90. Therefore, the termination of the services of the workmen is not on account of the refusal of the employment by the employer from 23-3-90 but on account of the closing of the business of the employer, w.e.f. 26-3-90. Now, the next question for determination is whether termination of the services of the workmen which is on account of closure is illegal and unjustified. The contention of the employer is that the termination of the services of the 8 workmen named in the reference is on account of closing of the business which is in turn on account of taking over the possession of the factory premises and plant and machinery by MSFC. The closure has been defined u/s 2(cc) of the Industrial Disputes Act, 1947 as permanent closing down of a place of employment or part thereof. The workmen have admitted in their evidence that the factory premises of the employer is closed and that MSFC has locked the said premises. As I have said earlier, there is no evidence whatsoever from the workmen that the employer has started its operation of manufacturing elsewhere. Therefore, it is a matter of fact that the business of the employer is closed and closure has come into effect. The Supreme Court in the case of M/s Tata Nagar Foundry Co. Ltd., v/s Their workmen reported in AIR 1970 SC 1960 has held that motive of closure is immaterial and what is to be seen is whether the closure is an effective one. The other contention that is raised by the workmen is that no notice was given nor legal dues were paid to the workmen when the factory was closed and therefore the termination of services is illegal. I do not agree with this contention of the workmen. As per Sec. 25-FFF(1) of the Industrial Dispute Act, 1947 in a case of closure of an undertaking the workmen is entitled to notice and compensation in accordance with the provisions of Sec. 25-F of the I.D. Act, 1947 as if the workman has been retrenched. Sec. 25-F provides for giving one month's notice in writing to the workmen or in lieu of such a notice, payment of wages for the period of notice and also payment of compensation which shall be equal of 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. The Supreme Court in the case of Santosh Gupta v/s State Bank of Patiala reported in AIR 1980 SC, 1219 has held that termination of services of the workmen as a consequence of closure is to be treated as retrenchment for the purpose of notice, compensation etc., which means it is to be treated as retrenchment only for the purpose of notice and payment of compensation as per Sec. 25-F of the Industrial Disputes Act, 1947. In another case i.e. in the case of M/s Avon Services Production Agency Pvt. Ltd., reported in AIR 1979 S.C., 170, the Supreme Court has held that giving of notice and payment of compensation as provided in Sec. 25-F of the I.D. Act, is not a condition precedent in the case of closure as otherwise it is in the case of retrenchment. This being the law laid down by the Supreme Court, the contention of the workmen that because no notice was given nor compensation was paid to them at the time of closure, the termination is illegal, is not tenable under the law. In the circumstances, I hold that the workmen have failed to prove that the termination of their services is not legal and justified and hence I answer the issue No. 1 in the negative. I further hold that the employer has succeeded in proving that the factory was closed or locked out and taken over by MSFC and hence I answer the issue No. 2 in the affirmative.

6. *Issue Nos. 3 & 4:* The contention of the workmen is that the employer started its production in the year 1980 and the workmen were in service with the employer since the year 1980. The employer

however, has denied the contention of the workmen and has stated that the production was started in the year 1985 and that except for the workmen Miss Kusum and Miss Kaniti who were employed in the year 1986, all the remaining workmen were employed in the year 1988. The burden was cast on the workmen to prove the issue No. 3 that their tenure of service started from the year 1980. Except for the production of ESI cards Exb. 16 (colly) no other document or oral evidence has been produced by the workmen in support of their above contention. The employer has produced the certificate issued by the Directorate of Industries and Mines Exb. 20 which gives the date of commencement of production as 15-10-84 and the letter dated 11-3-85 Exb. 21 from the Regional Director of E.S.I. states that the employer is covered under the ESI scheme w.e.f. 19-2-84. As per the letter dated 11-3-85 Exb. 21 the employer was allotted the code No. 32-0580-90-SF by the ESI Corporation whereas the ESI cards produced by the workmen mentions the employer's code No. as 32-333-90 which is totally different from the one allotted to the employer by the ESI Corporation. However, in respect of the workmen Miss Geeta Mayenkar and Miss Anjali Shirodkar, in the ESI cards the date of employment is mentioned as 1-1-1988 and the employer's code No. is mentioned as 32-0580-90-SF. This means that the above two workmen were working with the employer since 1-1-1988. There is no such endorsement in respect of the other ESI cards of the remaining workmen. However, the employer in the cross examination of the workman Shri Chandrakanat Kumbhar has suggested that in respect of his ESI card the date has been shown as 19-6-84 which is admitted by said Shri Chandrakanat Kumbhar. The contention of the workmen that the workman Miss Meena Chodankar joined the services along with the workman Shri Chandrakanat Kumbhar is denied by the employer and there is no evidence led by the workmen to substantiate this contention. Similarly, the employer has also failed to prove that it started the production in the year 1985. Infact the document produced by the employer itself, namely the certificate issued by the Directorate of Industries and Mines Exb. 20 and the letter dated 11-3-95 Exb. 21 shows that the employer started the production in the year 1984. The certificate Exb. 20 issued by the Directorate of Industries and Mines gives the date of commencement of production as 15-10-84. Therefore, the contention of the workmen that the employer started production in the year 1980 and also that their tenure of service started in the year 1980 cannot be accepted. Considering all the above evidence, I hold that the workmen have failed to prove that their tenure of service started from the year 1980 and hence I answer the issue No. 3 in the negative.

As I have said earlier, the workman No. 1, 3 and 5 have failed to prove that they were employed since the year 1980. However, the employer has stated that they were employed since January, 1988. Therefore, in the absence of any other evidence, in view of the admissions made by the employer it is to be considered that the above said workmen were employed w.e.f., 1-1-1988. As regards the workmen No. 2 and 7 they have also failed to prove that they were employed since the year 1980. The ESI cards produced by them show that they were employed by the employer w.e.f. 1-1-1988 and the employer has admitted that they were employed from the said date. As regards the workmen No. 4 and 6 they have also failed to prove that they were employed since the year 1980. However, the employer has stated that they were employed since January, 1986. Therefore, in the absence of any other evidence, in view of the admissions made by the employer it is to be considered that the above said workmen were employed w.e.f., January, 1986. Lastly, as regards the workman No. 8, he has also failed to prove that he was employed since the year 1980. However, the employer in the cross examination of the said workman has suggested that in the ESI card the date has been shown as 19-6-1984 which is admitted by the workman No. 8 Shri Chandrakanat Kumbhar.

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Therefore the date of employment of workman No. 8 is to be considered as 19-6-1984. In the circumstances, I hold that the workman No. 4 Miss Kusum Vaigankar and the workman No. 6 Miss Kanti Amonkar were in service with the employer since 1st January, 1986; the workman No. 8 Shri Chandrakant Kumbhar was in service with the employer since 19-6-84 and the workman No. 1 Miss Meena Chodankar, workman No. 2 Miss Geeta Mayekar, workman No. 3 Miss Rashikar Kubal, workman No. 5, Miss Lalitha Salgaonkar and workman No. 7 Miss Anjali Shirodkar were in service with the employer since 1-1-1988 and hence I answer the issue No. 4 accordingly.

7. *Issue No. 5:* The employer in the evidence of Shri Deepak Kakaya has admitted that no notice was given to the workmen prior to the closure nor any legal dues were paid to them. The workmen in their rejoinder at Exb. 10 have admitted that the employer has paid wages to them upto March, 1990. As per Section 25-FFF of the Industrial Disputes Act, 1947 in a case of closure of an undertaking the workmen is entitled to notice and compensation in accordance with the provisions of Sec. 25-F of the I.D. Act, 1947 as if the workmen had been retrenched. Sec. 25-F provides for giving one month's notice in writing to the workmen or in lieu of such notice, payment of wages for the period of notice and also payment of compensation which shall be equal of 15 days average pay of every completed year of continuous service or any part thereof in excess of 6 months. The workmen have claimed reinstatement with full back wages. The Supreme Court in the case of Indian Leaf Tobacco Development Company Ltd., reported in 1970 SC 860 has held that when the closure is genuine and real the workmen who have been retrenched due to such closure are entitled to retrenchment compensation only and cannot claim any re-employment or reinstatement. This being the case the claim of the workmen for reinstatement with full back wages cannot be granted. However, since each of the workmen has been in continuous employment for not less than one year immediately before the closure, the workmen are entitled to the compensation as per Sec. 25-F of the I. D. Act, 1947. In the circumstances, I hold that the workmen are entitled to the compensation being wages in lieu of one month's notice and 15 days average pay for every completed year of continuous service or any part thereof in excess of six months.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the services of the 8 workmen named in the reference were not terminated on 23-3-1990 but the same were terminated consequent upon the closure of the undertaking/factory of M/s Deep Plast, Tivim Industrial Estate Karaswada, Bardez-Goa, with effect from 26-3-1990. The management of M/s Deep Plast, Tivim Industrial Estate, Karaswada, Bardez-Goa, shall pay to the 8 workmen named in the reference wages in lieu of one month's notice and 15 days average pay for every completed year of continuous service or any part thereof in excess of six months as provided under Sec. 25-F of the Industrial Disputes Act, 1947.

There shall be no order as to costs.

Inform the Government accordingly about the passing of the award.

Sd/-
Ajit J. Agni
Presiding Officer
Industrial Tribunal

Department of Law & Judiciary Law Establishment Division

Order

No. 5/11/93-LD (Estt.)

Government is pleased to continue the ad hoc appointment of Shri P. V. S. Sardessai, District Registrar, Goa-cum-Head of Registers and Notary Services, Panaji in the scale of Rs. 6500-200-10500 in the Registration Department at Panaji for a further period from 1-4-98 to 30-9-98 or till the post is filled on regular basis whichever is earlier.

By order and in the name of the Governor of Goa.

N. B. Narvekar, Under Secretary (Law).

Panaji, 2nd April, 1998.

Order

No. LS/1077/93

The Government of Goa is pleased to appoint S/Shri Joaquim Godinho, Avinash Lawande and Vilas Thaly all Advocates as Additional Government Advocates, to appear in the matters before the High Court of Judicature at Bombay, Panaji Bench, Goa with immediate effect and until further orders.

By order and in the name of the Governor of Goa.

N. B. Narvekar, Under Secretary (Law).

Panaji, 25th September, 1998.

Notification

No. 2-5-1-93/LD

In pursuance of clause (b) of rule 17 of the Goa Civil Service (Judicial Branch) Rules, 1992 read with section 16 of the Goa, Daman and Diu Courts Act, 1965 (Act 16 of 1965), the Government of Goa on the recommendation of the High Court Bombay is hereby pleased to appoint Shri Shinde Pradeep Murlidharrao, Advocate to the post of Civil Judge Senior Division under (Grade II) of Goa Civil Service (Judicial Branch) Rules, 1992 on temporary basis with effect from the date he assume charge. He will draw his pay in the pay scale of Rs. 10650-325-15850.

This appointment is subject to the terms and conditions contained in this Department Memorandum No. 2-5-1-93/LD dated 22-12-95 and the provisions of the Goa Civil Services (Judicial Branch) Rules, 1992.

The appointment is subject to final decision that may be taken in the matter by the Supreme Court of India in Special Leave to Appeal (Civil) No. (s)22716/95 dated 20-6-95 filed by Goa Judicial Officer's Association against the State of Goa and Ors.

Shri Shinde Pradeep Murlidharrao should await for reporting himself to the District and Sessions Judge (North Goa/South Goa, Panaji/Margao until posting orders are issued by the Bombay High Court and before taking over the assignment.

The Seniority of the appointee in the Cadre of Civil Judge, Senior Division, will be fixed later by the High Court.

This issues with the concurrence of the Bombay High Court conveyed vide their letter No. A.5505/G/93 dated 12-1-1998.

By order and in the name of the Governor of Goa.

N. B. Narvekar, Under Secretary (Law).

Panaji, 6th May, 1998.

Order

No. DSC/MAR/GEL-10/1998/2255

Ex-post facto sanction is hereby granted for availing of Earned Leave for 2 days with effect from 5-1-98 to 6-1-98 to Smt. Anuja Prabhudesai, Addl. Civil Judge Sr. Divn. & J.M.F.C., Vasco, now Addl. District & Asst. Sessions Judge, South Goa, Margao.

Certified that but for proceeding on leave she would have officiated as Addl. Civil Judge Sr. Divn. & J.M.F.C., Vasco-da-Gama.

On return from the above leave Smt. Anuja Prabhudesai, reposted as Addl. Civil Judge Sr. Divn. & J.M.F.C., Vasco-da-Gama.

After availing the above leave she will have at her credit 107 days of earned leave as on 3-2-1998.

N. A. Britto, District & Sessions Judge (South).

Margao, 18th April, 1998.

Notification

No. 5/40/98-LD(4)

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952, Central Act (53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa is pleased to appoint Shri Babuso Savlo Gaonker as a Notary for a period of five years in Judicial Division of Bardez Taluka with effect from 14-8-1998.

By order and in the name of the Governor of Goa.

N. B. Narvekar, Under Secretary (Law).

Panaji, 14th August, 1998.

Court of District & Sessions Judge

Order

No. DSC/CN/16/98/2342

Consequent upon her marriage to Shri Dactu Gopi Pol, native from Bicholim, r/o Bordem, Bicholim, which was solemnised on 17-12-1997, the name of Vijay Jetley, Civil Judge, Junior Division and Judicial Magistrate, First Class, Bicholim, be changed to Smt. Vijaya Dactu Pol, in all service records.

V. P. Shetye, District and Sessions Judge (North).

Panaji, 18th April, 1998.

Order

No. DSC/MAR/GEL-10/1998/2254

Smt. Kshama D. Agshikar, Civil Judge Jr. Division & Judicial Magistrate First Class, Margao, is hereby granted maternity leave for 135 days with effect from 16-3-98 to 28-7-98 with permission to prefix 13-3-98, 14-3-98 & 15-3-98 being holiday, 2nd Saturday and Sunday respectively admissible to her as per O.M. No. 2/38/755/PER(Vol.II) dated 11-12-97 issued by the Department of Personnel, Secretariat, Panaji.

Certified that but for proceeding on leave she would have officiated in her post during the leave period.

N. A. Britto, District & Sessions Judge (South).

Margao, 18th April, 1998.